

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

RONALD DALE BURSTON, JR.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:12CV28 LMB
)	
JAMES COOPER,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

Before the Court is a return of service from the United States Marshal's Service relating to defendant Cooper. As plaintiff is aware, because he is proceeding in forma pauperis in this action, pursuant to 28 U.S.C. § 1915, the Court attempted to effectuate service on Mr. Cooper on plaintiff's behalf through the United States Marshal's Service.

On September 28, 2012, the United States Marshal's Service notified the Court that defendant James Cooper had died. When a party dies, the Court looks to Federal Rule of Civil Procedure 25 for the rules governing substitution of parties:

(a) Death

(1) *Substitution if the Claim is Not Extinguished.* If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not

made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Under the Federal Rules, plaintiff has ninety (90) days from service of the statement notifying the Court of the death to provide the Court with a motion to substitute the proper party. On that same date, plaintiff must also provide the Court with an address at which the new party may be served, pursuant to Fed.R.Civ.P. 4 and 28 U.S.C. § 1915. Plaintiff's failure to do so within that time period will result in a dismissal of his claim under Rule 25.

Accordingly,

IT IS HEREBY ORDERED that within ninety (90) days of September 28, 2012, plaintiff shall file a motion to substitute under Fed.R.Civ.P. 25.

IT IS FURTHER ORDERED that within ninety (90) days of September 28, 2012, in addition to filing a motion to substitute the proper party, plaintiff shall also provide the Court an address at which the new party may be served.

IT IS FURTHER ORDERED that plaintiff's failure to comply with this Court Memorandum and Order will result in a dismissal of this action.

Dated this 4th day of October, 2012.



LEWIS M. BLANTON
UNITED STATES MAGISTRATE JUDGE